

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOETTA L. VREDENBURG

Claimant

VS.

U.S.D. NO. 259

Respondent

Self-Insured

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Docket No. 176,856

ORDER

The respondent requested review of the Award entered by Special Administrative Law Judge Douglas F. Martin dated April 1, 1996. The Appeals Board heard oral argument on September 4, 1996, in Wichita, Kansas.

APPEARANCES

Claimant appeared by her attorney, Richard Sanborn of Wichita, Kansas. Respondent, a qualified self-insured, appeared by its attorney, Larry Shoaf of Wichita, Kansas.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Special Administrative Law Judge awarded claimant permanent partial general disability benefits for a 32 percent work disability. The respondent requested review and asked the Appeals Board to review the issues of (1) whether claimant sustained personal injury by accident arising out of and in the course of her employment with respondent; (2)

the nature and extent of claimant's disability, if any; and (3) claimant's average weekly wage. Those three issues are now before the Appeals Board upon this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award entered by the Special Administrative Law Judge should be modified to award claimant permanent partial disability benefits for an injury to the left upper extremity only.

(1) The Appeals Board finds that claimant injured her left hand and arm while working for the respondent through her last day of work on March 19, 1993. This conclusion is based upon claimant's testimony that she principally used her left hand while performing her job duties and the opinion of her treating physician, board-certified orthopedic surgeon J. Mark Melhorn, M.D., that claimant's work probably contributed to her condition.

(2) The Appeals Board finds that claimant has established that the injury to the left hand and arm was caused by her employment. However, claimant has failed to prove that the alleged right upper extremity injury was caused by her work.

In February 1992 claimant sustained a back injury and was taken off work for treatment. Claimant testified she returned to work for respondent with restrictions from the treating physician of no lifting greater than 40 pounds, no repetitive lifting greater than 25 pounds, and no bending or twisting. Upon claimant's return to work, respondent accommodated claimant's restrictions, placed her on light duty, and assigned claimant more supervisory duties. Between the February 1992 back injury and the last day of work on March 19, 1993, claimant worked 164 out of the 290 available work days. Two of claimant's coworkers testified that claimant performed very little physical labor when she returned to work after recovering from the back injury. During the week following March 19, 1993, while claimant was off work, claimant sought medical treatment from her family physician because she thought she was having a heart attack. Several days later claimant sought treatment at a minor emergency center for pain in her left arm. On March 29, 1993, claimant reported to her supervisor that she had pain in her left arm from the elbow to the fingertips. After the minor emergency center visit, claimant next sought medical treatment from Dr. Melhorn. Claimant initially reported to Dr. Melhorn that she had symptoms in her left arm which had begun in February 1993. At the initial visit with the doctor on April 6, 1993, claimant completed a pain drawing that indicated symptoms in the left upper extremity only and none on the right. The first date that right arm complaints appear in Dr. Melhorn's office dictation is May 10, 1993, a date after which claimant had seen the doctor numerous times and completed numerous pain drawings which omitted notation of right arm symptoms.

Despite the fact that claimant worked only intermittently after February 1992 and despite the fact that claimant's work was limited to light duty, the Appeals Board finds by the slightest of margins that claimant's job duties did contribute to the left arm injury which resulted in left de Quervain's, left carpal tunnel syndrome, left lateral epicondylitis, and left wrist radial nerve pathology. However, the evidence fails to establish that claimant's work contributed to the right arm condition. As claimant testified, she performed most of her work with the left hand. Claimant has failed to establish the mechanism of injury to the right arm in light of claimant's work history after February 1992. The evidentiary record is devoid of evidence explaining how the right arm was allegedly injured when claimant used it sparingly. Based upon the above findings, claimant's permanent partial disability benefits are computed under the "scheduled injury statute," K.S.A. 1992 Supp. 44-510d.

The Appeals Board finds that claimant has sustained an 18 percent permanent partial functional impairment to the left arm for which she should receive permanent partial disability benefits. That percentage is an average of the 8.55 percent impairment rating to the left arm provided by Dr. Melhorn; the 28 percent impairment rating to the left upper extremity provided by sports medicine and rehabilitation physician, Mary A. Lynch, M.D.; and the 17 percent impairment rating to the left upper extremity provided by board-certified physiatrist Lawrence R. Blaty, M.D.

(3) The parties agreed that claimant's average weekly wage excluding additional compensation items is \$411.72 and claimant's average weekly wage including additional compensation items is \$484.90. Also, the evidence establishes that claimant was terminated because of the February 1992 low back injury on June 30, 1993, the date claimant would have lost her right to receive additional compensation items. Based upon those facts, the Appeals Board finds that claimant's average weekly wage is \$411.72 for the period from March 19, 1993, through June 30, 1993, and \$484.90 for the period commencing July 1, 1993.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Special Administrative Law Judge Douglas F. Martin dated April 1, 1996, should be, and hereby is, modified; that claimant is entitled to permanent partial disability benefits based upon an 18 percent permanent partial functional impairment to the left arm.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Joetta L. Vredenburg, and against the respondent, U.S.D. No. 259, a qualified self-insured, for an accidental injury which occurred on March 19, 1993, for the period March 19, 1993, through June 30, 1993, a period of 14.71 weeks, and based upon an average weekly wage of \$411.72, claimant is entitled to 14.71 weeks of temporary total disability compensation at the rate of \$274.49 per week or \$4,037.75.

For the period commencing July 1, 1993, and based upon an average weekly wage of \$484.90, claimant is entitled to 35.15 weeks of permanent partial general disability benefits at the rate of \$299 per week, or \$10,509.85, making a total award of \$14,547.60, for an 18% permanent partial functional impairment to the left arm.

As of September 30, 1996, there is due and owing claimant 14.71 weeks of temporary total disability compensation at the rate of \$274.49 per week or \$4,037.75, followed by 35.15 weeks of permanent partial compensation at the rate of \$299 per week in the sum of \$10,509.85, for a total of \$14,547.60, which is ordered paid in one lump sum less any amounts previously paid.

The remaining orders entered by the Special Administrative Law Judge are hereby adopted by the Appeals Board to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Richard Sanborn, Wichita, KS
Larry Shoaf, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Douglas F. Martin, Special Administrative Law Judge
Philip S. Harness, Director